

Amendment No. 1 to SB0940

Beavers
Signature of Sponsor

AMEND Senate Bill No. 940*

House Bill No. 1641

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 4-21-311, is amended by the addition thereto of a new subsection (e) which shall read as follows:

(e) In any civil cause of action alleging a violation of this chapter or of Tennessee Code Annotated, Section 8-50-103, the plaintiff shall have the burden of establishing a prima facie case of intentional discrimination or retaliation. If the plaintiff satisfies this burden, the burden shall then be on the defendant to produce evidence that one or more legitimate, nondiscriminatory reasons existed for the challenged employment action. The burden on the defendant is one of production and not persuasion. If the defendant produces such evidence, the presumption of discrimination or retaliation raised by the plaintiff's prima facie case is rebutted, and the burden shifts to the plaintiff to demonstrate that the reason given by the defendant was not the true reason for the challenged employment action and that the stated reason was a pretext for illegal discrimination or retaliation. The foregoing allocations of burdens of proof shall apply at all stages of the proceedings, including motions for summary judgment. The plaintiff at all times retains the burden of persuading the trier of fact that he or she has been the victim of intentional discrimination or retaliation.

SECTION 2. Tennessee Code Annotated, Section 50-1-304, is amended by the addition thereto of new subsection (g) which shall read as follows:

(g) In any civil cause of action for retaliatory discharge brought pursuant to this section, or in any civil cause of action alleging retaliation for refusing to participate in or remain silent about illegal activities under Tennessee common law, the plaintiff shall have the burden of establishing a prima facie case of retaliatory discharge. If the plaintiff

satisfies this burden, the burden shall then be on the defendant to produce evidence that one or more legitimate, nondiscriminatory reasons existed for the plaintiff's discharge. The burden on the defendant is one of production and not persuasion. If the defendant produces such evidence, the presumption of discrimination raised by the plaintiff's prima facie case is rebutted, and the burden shifts to the plaintiff to demonstrate that the reason given by the defendant was not the true reason for the plaintiff's discharge and that the stated reason was a pretext for unlawful retaliation. The foregoing allocations of burdens of proof shall apply at all stages of the proceedings, including motions for summary judgment. The plaintiff at all times retains the burden of persuading the trier of fact that the plaintiff has been the victim of unlawful retaliation.

SECTION 3. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following as a new Part 7:

50-1-701. In any civil cause of action alleging wrongful discharge in violation of Tennessee public policy, including but not limited to a discharge in retaliation for the exercise of rights under the Tennessee workers' compensation law, the plaintiff shall have the burden of establishing a prima facie case of retaliatory discharge. If the plaintiff satisfies this burden, the burden shall then be on the defendant to produce evidence that one or more legitimate, nondiscriminatory reasons existed for the plaintiff's discharge. The burden on the defendant is one of production and not persuasion. If the defendant produces such evidence, the presumption of discrimination raised by the plaintiff's prima facie case is rebutted, and the burden shifts to the plaintiff to demonstrate that the reason given by the defendant was not the true reason for the plaintiff's discharge and that the stated reason was a pretext for unlawful retaliation. The foregoing allocations of burdens of proof shall apply at all stages of the proceedings, including motions for summary judgment. The plaintiff at all times retains the burden of persuading the trier of fact that the plaintiff has been the victim of unlawful retaliation or wrongful discharge.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it and shall apply to all causes of action accruing on or after such effective date.